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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.972 OF 1997

M/s.Advani Oerlikon Limited ... Petitioner

V/s.

Shri Shashikant M. Sable & Anr. ... Respondents

Mr.C.U. Singh with Mr.Neel Helekar for Petitioner
Mr.Y.M. Pendse for Respondent No.1
Respondent No.2 - formal party

CORAM: **SMT.NISHITA MHATRE, J.**

JUDGMENT RESERVED ON: **OCTOBER 24, 2007**
JUDGMENT PRONOUNCED ON: **NOVEMBER 30, 2007**

JUDGMENT:

. This petition challenges the award part I passed by the Labour Court in Reference (IDA) No.563 of 1991. The Labour court has held that the three enquiries conducted against the respondent workman were not fair and proper. It has permitted the petitioners to lead fresh evidence before it in support of the charges levelled against the respondent workman. The main reason which appealed to the Labour Court for concluding that the enquiries held against the workman were in breach of the principles of natural justice is that the enquiries were not conducted in a language known to the workman i.e., Marathi. The Labour Court was of the view that the enquiry officer who was a Konkani speaking person was not qualified to translate Marathi into English and vice versa. The Labour Court was of the

view that this has caused prejudice to the workman and has therefore set aside the enquiry.

2. The facts may be adumbrated as follows:

Show-cause notices were issued to the respondent workman for various acts of misconduct. Thereafter on 13.5.1989, 10.7.1989 and 22.8.1989, chargesheets were issued to the workman for these acts of misconduct. Domestic enquiries were instituted in respect of all the three chargesheets. The workman was defended by a representative of his choice who was the office bearer of the union of which the workman was a member. Three separate enquiries were held in which the workman was represented by the same defence representative. When these enquiries commenced, the workman insisted that the proceedings should be conducted in Marathi as he had no knowledge of English. The enquiry officer, therefore, conducted the enquiry in Marathi and recorded the proceedings of the enquiry in English. On each day of the enquiry, the notes of the proceedings were furnished to the workman and his defence representative. The workman has endorsed these notes of enquiry, in Marathi, on almost all the days barring a few, that he had not understood anything. The enquiry officer has noted the questions put by the defence representative, who admittedly knew English, to the non-Marathi speaking

witnesses at the enquiry in the question and answer format. The enquiry officer then submitted his report finding that the workman was guilty of the charges levelled against him in all the three enquiries. On the basis of the reports submitted by the enquiry officer, the petitioner dismissed the respondent workman from service.

3. The workman raised an industrial dispute in respect of his dismissal from service which was referred as Reference (IDA) No.563 of 1991 before the Labour Court. The workman in the statement of claim filed by him has pleaded inter alia that the domestic enquiries conducted against him were in breach of the provisions of the model standing orders framed under the Industrial Employment (Standing Orders) Act and were therefore, violative of the principles of natural justice. It was pleaded that the enquiry had been conducted in English and not in Marathi as requested by the workman. Besides this, it is contended that the workman was not paid subsistence allowance in accordance with law and therefore the enquiry is vitiated. In its written statement, the petitioner has denied the allegations contained in the statement of claim. Evidence of the workman was recorded before the Labour court. He has stated that he was educated upto the 7th standard in Marathi medium. He has also stated that he had endorsed

the notes of enquiry furnished to him by recording that he had not understood anything. The workman has stated that the petitioner's witness Mr.Desai deposed in English and the enquiry officer had not translated the deposition into Marathi for him. He has also stated that the conversation conducted between the enquiry officer and the management representative was in English throughout the enquiry. As regards the third enquiry in respect of the chargesheet dated 23.8.1989, the workman has stated that the enquiry was conducted in Marathi. However, the proceedings were recorded in English. According to the workman, the recording of the proceedings in English was not explained to him in Marathi at any point of time. In his cross-examination, he has conceded that his defence representative did pose questions to the petitioner's witness in English and they were answered by the witness in the same language. He has conceded that his defence representative had questioned the witnesses on his behalf. The workman has further stated that the enquiry officer did not explain the day's proceedings to him as recorded by him.

4. The enquiry officer who was examined has stated that his mother tongue was not Marathi and that he had not passed any examinations in that language. The enquiry officer has also stated that all the witnesses except A.H. Desai were examined in Marathi and that

they deposed in the same language. As regards the deposition of A.H. Desai, he has stated that the witness had answered all questions in English and they had been recorded by him in the same language.

5. As stated earlier, the Labour Court has had by award part I set aside the enquiries held against the workman. The main contention of the petitioner is that although the standing order 25(4) of the Model Standing Orders contemplates the conduct of a domestic enquiry in the language known to the workman, the workman must show that some prejudice has been caused to him by recording the enquiry proceedings including the deposition of the witnesses in English. It is submitted that the defence representative of the workman who was present on almost all days of the enquiry knew English; he had questioned the witnesses in the English language and therefore there was no prejudice caused to the workman by recording the proceedings in English. It is then submitted that the Labour court has on the basis of conjectures held that a Konkani speaking person would not have sufficient knowledge of Marathi to translate it into the English language and vice versa while recording the proceedings in English. Reliance is placed by the learned Counsel for the petitioner on the judgments of the Supreme Court in *Sahil Khan v/s. Hashmat and Company,* **2007 (1) Mh.L.J. 249;** *K.L. Tripathi v/s.*

State Bank of India, **(1984) 1 SCC 43**; *P.D. Agrawal v/s. State Bank of Inda & Ors.*, **(2006) 8 SCC 776** and of a learned Single Judge of this Court in *Indian Hotels Company Ltd. vs. Jagat Singh Gurow,* **Writ Petition No.3125 of 2006** decided on 31.1.2007 in support of his submission that before a domestic enquiry is set aide on the ground that it was held in breach of the principles of natural justice and fair play, the workman must demonstrate that he had been caused some prejudice by the procedure adopted at the enquiry.

6. The learned advocate for the respondent on the other hand, submitted that an act or omission of a party can itself lead to the proof of prejudice, and in such cases the workman need not specifically plead and prove the prejudice caused to him. It is submitted that when standing order 25(4) gives an option to a workman to have the domestic enquiry against him conducted in a particular language and the enquiry officer does not accept his request, this by itself is a mark of prejudice. It is submitted that the notes of the enquiry proceedings do not disclose that the proceedings were explained in Marathi to the respondent workman and this also is a measure of the prejudice against the workmen and the breach of the principles of natural justice. An affidavit has been filed indicating certain grounds on which the enquires were challenged before the

Labour Court. One of the grounds of challenge is that the workman who was suspended pending the enquiry was not paid subsistence allowance as required under the Model Standing orders, thereby causing him great prejudice. It is submitted that non-payment of subsistence allowance in accordance with law is one more reason for setting aside the enquiries conducted against the workman.

7. A perusal of the impugned award indicates that the Labour Court has, on the basis of conjectures and surmises, held that the enquiry was vitiated because the enquiry officer was a person whose mother tongue was not Marathi and therefore he would not have sufficient knowledge of the language to translate the proceedings of the enquiry into Marathi from English and vice versa. The Labour Court had no material before him, except the fact that the enquiry officer had deposed that his mother tongue was Konkani and that he had not passed any examinations in Marathi, to draw this inference. There is no material on record to indicate that the enquiry officer was not acquainted with Marathi or that he did not have sufficient knowledge of the language to translate the proceedings. Therefore, in my opinion, the reasons put forth by the Labour Court for holding that the enquiry was vitiated cannot be accepted.

8. Standing order 25(4) stipulates as follows:

> (4) A workman against whom an inquiry is proposed to be held shall be given a charge-sheet clearly setting forth the circumstances appearing against him and requiring his explanation. He shall be permitted to appear himself for defending him or shall be permitted to be defended by a workman working in the same department as himself or by any office-bearer of a trade union of which he is a member. Except for reasons to be recorded in writing by the officer holding the inquiry, the workman shall be permitted to produce witness in his defence and cross-examine any witness on whose evidence the charges rests. A concise summary of the evidence led on either side and the workman's plea shall be recorded.
>
> All proceedings of the inquiry shall be conducted in English, Hindi or Marathi according to the choice of the workman concerned and the person defending him.
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> The inquiry shall be completed within a period of three months:
>
> Provided that the period of three months may, for reason to be recorded in writing, be extended to such further period as may be deemed necessary by the enquiry officer."

9. The Standing Order envisages that the 'conduct of the domestic enquiry' must be in a language known to the workman i.e. English, Hindi or Marathi. It will, therefore, be necessary to consider the import of the expression "All proceedings of the enquiry shall be conducted". Would it relate only to the depositions and the submissions made at the domestic enquiry or would it include the recording of the proceedings of the domestic

enquiry? Would it be necessary to consider whether the failure on the part of the enquiry officer to do so would require the workman to show that he was prejudiced by the procedure adopted by the enquiry officer before an enquiry can be vitiated.

10. In my view, it would not be necessary for me to answer the aforesaid questions in the present case as the workman was represented by a defense representative who was well versed in the English language. Admittedly, he had posed questions during the crossexamination of the witnesses of the management in English. He was present when the answers were recorded in English. He was given a copy of the enquiry proceedings. He has endorsed the same on each day on which he was present, although, the workman had indicated that he had not understood the contents. The defense representative had requested the enquiry officer to act on the option exercised by the workman and to conduct the enquiry in Marathi. However, it appears from the record that the enquiry officer recorded the statements and depositions of the witnesses in English although the questions were asked and answered in Marathi. One witness did not know Marathi and therefore he was examined and crossexamined in English and his deposition was also recorded in English. In my view, when the workman is represented by a defense

representative who is well versed in the English language it could not be said that a workman has been prejudiced by recording the enquiry proceedings in English. The defense representative is expected to take care of the interests of the workman he defends at the enquiry. If the enquiry officer does not perform his duty of explaining the contents of the enquiry proceedings which are recorded by him, it is expected of the defense representative to explain the contents of the same to the delinquent workman. In the present case, the workman was present at the domestic enquiry throughout and he was also represented by a defense representative who was well versed in English who by his conduct had agreed that the proceedings of the enquiry could be conducted in English. There was no word of protest from the defense representative or the workman against the procedure adopted at the enquiry. Therefore, it cannot be said that the workman had been caused any prejudice by recording the statements and the testimony of the witnesses in English.

11. The submission of the learned advocate for the respondent that the very fact that the depositions were recorded in a language not known to the workman would cause prejudice is without merit as in this case, the workman had the assistance of his defense representative while participating in the domestic enquiry. The

judgments in the case of K.L. Tripathi (supra) and in the case of P.D. Agrawal (supra) indicate that before a domestic enquiry is set aside, the workman must plead and prove prejudice. In the present case, there is no dispute that the recording of the enquiry proceedings was done in the English language. However, there is no material on record to indicate that this has caused any prejudice to the workman. Therefore, the submissions of the learned advocate for the workman cannot be accepted.

12. The learned advocate for the workman that the enquiry was vitiated because the subsistence allowance has not been paid. This is one of the grounds in the statement of claim for contending that the domestic enquiry held against the workman is vitiated. However, there is no material on record to indicate what was the amount which was paid to the workman by way of subsistence allowance or whether he was paid any amount at all. There is no finding of the Labour Court on this issue and therefore it is not necessary for me to to go into the same. However, the Labour Court shall decide this issue while dealing with Award Part II.

13. The petition is accordingly allowed. The award of the Labour Court is set aside. Rule made absolute accordingly. No costs.